REMARKS

Claim Amendments

The Office Action dated April 1, 2008 sets forth a requirement for restriction that is directed to claims 1-92 allegedly on record. Applicants respectfully submit that claims 1-27 are of record, not claims 1-92.

Specifically, the PCT application, PCT/AU2003/001111, was filed on August 29, 2003 with 92 claims. In response to the Written Opinion dated May 19, 2004, Applicants submitted a substitute set of claims (claims 1-27) on September 30, 2004. A copy of this substitute set of claims, and a copy of the International Preliminary Examination Report, were included when the PCT application entered the U.S. national phase on February 28, 2005. Additionally, Applicants paid claim fees based on this substitute set of claims on February 28, 2005.

By way of the foregoing amendments, Applicants have canceled claims 1-27 of record, and are presenting new claims 28-37. These new claims are fully supported by the previous claims and the specification, and more clearly delineated certain preferred embodiments of the present application. No new matter is introduced.

Response to Restriction Requirement

In the Office Action, the Examiner states that this application contains the following seven (7) groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Group I. Claims 1-57, 60, 62-63, 65, 66-68, 70, 73, 77-80, 82-86, 89-90, 91 and 92, drawn to an isolated nucleic acid molecule comprising a sequence encoding a flavonoid 3', 5', hydroxylase, a construct, a method of

producing a transgenic plant, or a genetically modified plant comprising said nucleic acid molecule.

Group II. Claims 58, 64, 66-67, 69-70, 81, and 91, drawn to method for producing a transgenic plant with reduced F3'5'H activity or altered inflorescence, or a genetically modified plant having reduced F3'5'H activity or altered inflorescence.

Group III. Claims 59, and 61, drawn to a method for producing a genetically modified plant with reduced indigenous or existing F3'5'H activity, said method comprising altering F3'5'H gene through modification of the indigenous sequences via homologous recombination from an appropriately altered F3'5'H gene, or wherein said method produces a flowering plant exhibiting altered inflorescence.

Group IV. Claims 71 and 72 drawn to an extract from a genetically modified plant or part thereof.

Group V. Claims 74-76 drawn to an isolated recombinant F3'5'H or peptide having F3'5'H activity.

Group VI. Claim 87 drawn to an isolated molecule comprising a promoter of SEQ ID NO: 5.

Group VII. Claim 88 drawn to an isolated molecule comprising a promoter of SEQ ID NO: 30.

According to the Examiner, the technical feature linking Groups I-VII appears to be a nucleic acid sequence encoding a flavonoid 3',5' hydroxylase. However, Holton et al. (WO 94/28140) disclose a nucleic acid sequence encoding a flavonoid 3',5' hydroxylase. The reference also discloses making transgenic plants overexpressing such nucleic acid sequences. The reference also discloses detecting delphinidin or delphinidin based molecules in a rose petal of said transgenic plant as measured by a chromatographic technique. Therefore, the Examiner concludes that the technical feature linking the inventions of Groups I-VII does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art. In addition, the Examiner has required Applicants to elect one nucleic acid

sequence and its encoded protein with the elected Group of claims. For Group I, the Examiner has also required Applicants to elect one promoter sequence from SEQ ID NOS: 5 and 30.

In order to be fully responsive to the Examiner's requirements for restriction, Applicants provisionally elect, with traverse, Group I, drawn to an isolated nucleic acid molecule comprising a sequence encoding a flavonoid 3', 5' hydroxylase, a construct, a method of producing a transgenic plant, or a genetically modified plant comprising said nucleic acid molecule. Applicants further provisionally elect SEQ ID NOS: 11 and 12 as the sequences for continued prosecution. Applicants respectfully submit that new claims 28-37 are all generic relative to the elected sequences, and claims 28 and 36 specifically recite the elected sequences. Applicants further respectfully submit that the requirement for electing a promoter sequence is moot in light of the newly presented claims.

However, pursuant to 37 C.F.R. §§1.111 and 1.143, Applicants hereby traverse the Examiner's requirement for restriction and request reconsideration thereof in view of the following remarks.

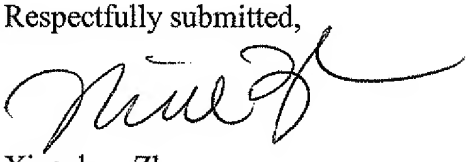
Applicants respectfully submit that a requirement for restriction presupposes an analysis of the subject application in light of the rules governing this practice, i.e., 37 C.F.R. §1.499 and PCT Rules 13.1 and 13.2. PCT Rule 13.1, first sentence, states: "The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ('requirement of unity of invention')." (Emphasis added.) PCT Rule 13.2 states: "The expression "technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." (Emphasis added.)

The presently presented claims 28-37 are linked to each other under a single general inventive concept, and share a technical feature that defines a contribution over the prior art. Specifically, claims 28-37 are directed to nucleic acid molecules comprising a nucleotide sequence that encodes a flavonoid 3',5' hydroxylase (F3'5'H), a genetic construct and a genetically modified plant. The nucleotide sequence is characterized as encoding an amino acid sequence selected from SEQ ID NO: 10 or SEQ ID NO: 12 or an amino acid sequence homologous thereto; alternatively, the nucleotide sequence comprises SEQ ID NO: 9 or SEQ ID NO: 11 or a nucleotide sequence homologous thereto. Applicants respectfully submit that SEQ ID NO: 9 and SEQ ID NO: 11 encode the protein of SEQ ID NO: 10 and SEQ ID NO: 12, respectively. The two molecules, SEQ ID NO: 9/10 and SEQ ID NO: 11/12, represent two pansy clones encoding F3'5'H. The two pansy molecules share 91% sequence identity at the amino acid level. Clearly, the two molecules are related to each other, and are not disclosed or suggested anywhere in the prior art, including Holton et al., and should be examined together in this application.

Applicants respectfully submit that a determination to make the pending restriction requirement final must evidence the patentable distinctness of all defined groups and sequences, one from the other, as presented by the Examiner.

Accordingly, it is respectfully submitted that the present claims satisfy the requirements for unity of invention. Applicants respectfully urge that the Examiner reconsider and withdraw the requirement for restriction and provide an action on the merits with respect to all the claims and sequences, as presently recited.

Respectfully submitted,



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